

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kristen Lanham-Hostetter	Team: Team # 1	CCRB Case #: 201010081	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 07/18/2010 1:45 AM	Location of Incident: Home Street and West Farms Road; inside the 41st Precinct stationhouse § 87(2)(b) Hospital	Precinct: 42	18 Mo. SOL 1/18/2012	EO SOL 1/18/2012	
Date/Time CV Reported Mon, 07/26/2010 8:01 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 07/26/2010 8:01 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Alfredo Alba	00145	933598	PBBX TF
2. POM Miguel Lajara	10410	938807	PBBX TF

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Lissette Nieves	04106	911755	PBBX TF
2. LT Hamilton Nunez	00000	902113	041 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Miguel Lajara	Discourtesy: At Home Street and West Farms Road, PO Miguel Lajara spoke obscenely and/or rudely to § 87(2)(b)	
B.POM Alfredo Alba	Discourtesy: At Home Street and West Farms Road, and inside § 87(2)(b) Hospital, PO Alfredo Alba spoke obscenely to § 87(2)(b)	
C.POM Alfredo Alba	Force: Inside the 41st Precinct stationhouse, and inside § 87(2)(b) Hospital, PO Alfredo Alba tightly handcuffed § 87(2)(b)	

## Case Summary

§ 87(2)(b) filed this complaint with the Internal Affairs Bureau on July 18, 2010 and July 20, 2010. His complaint was received at the CCRB under log numbers 10-36355 and 10-36983 on July 26, 2010. § 87(2)(b) also filed his complaint with the CCRB by phone on July 26, 2010. On July 18, 2010, § 87(2)(b) was pulled over at the intersection of Home Street and West Farms Road, in the Bronx. § 87(2)(b) protested the stop of his car, which led to his arrest and the following allegations:

- **Allegation A – Discourtesy: At Home Street and West Farms Road, PO Miguel Lajara spoke obscenely and/or rudely to § 87(2)(b)**
- **Allegation B – Discourtesy: At Home Street and West Farms Road, and inside § 87(2)(b) Hospital, PO Alfredo Alba spoke obscenely to § 87(2)(b)** Since the § 87(2)(b), § 87(2)(g)
- **Allegation C – Force: Inside the 41st Precinct stationhouse, and inside § 87(2)(b) Hospital, PO Alfredo Alba tightly handcuffed § 87(2)(b) § 87(2)(g)**

## Results of Investigation

### Civilian Statements

#### **Complainant/Victim:** § 87(2)(b)

- § 87(2)(b) -old Hispanic male who stands at 5'7" tall, weighs 185 pounds, and has brown hair and brown eyes. § 87(2)(b) § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on July 28, 2010 (encl. 6c-k) and interviewed by IAB on July 22, 2010 (encl. 6a-b). His statement was consistent with his statement to IAB, his initial statement to the CCRB, and to medical providers, with exceptions noted below. On July 18, 2010, at approximately 1:15am, § 87(2)(b) and his friend, whose name he did not wish to provide, were riding their motorcycles in front of the Tropicana Club, on Home Street, near the intersection of West Farms Road, in the Bronx. § 87(2)(b) had not been drinking. Two police officers drove around the block in their car several times. The passenger of the car was described as a Hispanic male, with dark skin, short, military cut hair, in his late 20's to early 30's, 180-200 pounds, medium build, in uniform. His nameplate read, "Alba," and he was identified by the investigation as PO Alfredo Alba of Patrol Boro Bronx Task Force. The driver of the car was described as a Hispanic male, with short military cut hair, approximately the same height, build, and complexion as PO Alba, in his late 20's. His nameplate read, "Alayha" or "Ayaha," and he was identified as PO Miguel Lajara of Patrol Boro Bronx Task Force. Three very intoxicated women were standing outside the Tropicana Club. § 87(2)(b) and his friend were talking to two of the women, and invited them to go with them to City Island. The third woman was talking to PO Lajara. The two women agreed to go with § 87(2)(b) to City Island, if their friend could go too. § 87(2)(b) departed to get his truck, which could hold more people.

§ 87(2)(b) drove from the Tropicana to his residence, picked up his 2009 Mercedes Benz SUV, and drove back to the Tropicana Club. When he arrived, at approximately 1:45am,

PO Lajara was still talking to the same woman. The two other women walked to § 87(2)(b)'s car, and called to their friend, who exited the conversation with PO Lajara and walked over to § 87(2)(b)'s car. PO Alba also approached § 87(2)(b) and told him to move his truck, which was in the middle of the street. § 87(2)(b) told him that there was traffic, but that he would move it when the light turned green. PO Alba said, "Fine." § 87(2)(b) told the women to go to the corner, and wait for him there. When the light turned green, traffic started to move, and PO Lajara was still trying to speak with the woman from his car. § 87(2)(b) told the woman, "Come with me, because he's not going to put you in a police car." § 87(2)(b) would not say whether the woman got into his car or not. He then put his left turn signal on, and made a left turn onto West Farms Road. PO Alba got into his police car, drove behind § 87(2)(b) and indicated with the police lights and siren for him to pull over. § 87(2)(b) pulled over in front of a fire hydrant at the other side of the intersection of Home Street and West Farms Road.

After § 87(2)(b) pulled over, he rolled down all his windows, turned on his car's interior lights, took out his license, registration, and insurance card, and handed it to PO Alba, who had walked to the drivers' side of § 87(2)(b)'s vehicle. PO Alba asked if § 87(2)(b) had been drinking. § 87(2)(b) said he had not been, and told them to give him a blood test and a breathalyzer test, but the officers refused. § 87(2)(b) told PO Alba that he was going to call his commanding officer and that he was going to call his lawyer. PO Lajara came around to the passenger side of the car and tried to open the door. § 87(2)(b) asked, "What are you doing?" PO Lajara told him to open the door. § 87(2)(b) refused and locked that door and closed the passenger side window. PO Alba asked why he did that, and § 87(2)(b) said, "Because you're not searching my car." PO Alba said, "Alright, if you want to play it that way," and started walking away. At some point while both officers were next to his car, he started to create a sound recording on his Blackberry phone, and told the officers, "I'm recording this conversation for my safety and yours. What am I being stopped for?" PO Alba said, "Don't worry about it," and then walked away to check § 87(2)(b)'s ID. As he walked away, § 87(2)(b) said, "While you check my license, I'm going to call the 43<sup>rd</sup> or 41<sup>st</sup> Precinct and tell the sergeant why you guys are stopping me and why you're trying to search my car with no probable cause." PO Alba then walked back to the car and opened the driver's side door. With all of § 87(2)(b)'s papers in his hands, PO Alba grabbed § 87(2)(b)'s shirt near his shoulder area and pulled him out of the car. § 87(2)(b) allowed himself to be pulled from the car. PO Alba pushed him to the back of his car, and pushed him against the car hard enough that when § 87(2)(b)'s elbow hit the car, it made a dent. PO Alba then turned § 87(2)(b) around so he was facing the car, and handcuffed him. Later in his interview, § 87(2)(b) stated that PO Alba and PO Lajara both handcuffed him. While § 87(2)(b) was being frisked and searched, he told officers several times that they could not search the car and argued with them about frisking and searching him.

§ 87(2)(b) told the officers that they were going down, and that they did not say anything back to him, but later in his interview stated that PO Alba and PO Lajara both told him to "Shut the fuck up," after he told them they were "going down."

Somehow, the button on his keys was activated, and the hatch on his car was opened. When the hatch opens, all of the lights in the car go on. § 87(2)(b) was placed into the back of the police car by PO Alba, where he could clearly see everything that was happening, through the open hatch of his car, approximately five to six feet ahead. § 87(2)(b) said in his interview later that he told the officers, "If you want to search the car, search the car." PO Lajara went to the driver's side of the car, and opened the locked glove box with one of § 87(2)(b)'s keys. His iPod was in the glove box, which was vouchered. He told PO Lajara approximately four times not to drive his car, and told the officers that they were required to

impound that car. In his statement to IAB, § 87(2)(b) made no mention of his car being searched, and in his phone statement, § 87(2)(b) specifically stated that he did not see officers search his car, and was not present when it occurred.

PO Alba drove § 87(2)(b) to the stationhouse, and PO Lajara drove his car, which was vouchered and left at the stationhouse. On the way to the stationhouse, § 87(2)(b) saw PO Lajara hit the side of a double-parked car with § 87(2)(b)'s car. In his interview with IAB, § 87(2)(b) stated that no damage occurred to his car when PO Lajara drove it.

When § 87(2)(b) arrived at the stationhouse, he was taken inside, where a lieutenant was seated behind a desk and a sergeant was standing behind the same desk. The lieutenant was described as a dark-skinned male, wearing a uniform with a white shirt, with a "big build," and of unknown height, as he was sitting. He was identified by the investigation as LT Hamilton Nunez of the 41<sup>st</sup> Precinct. The sergeant was described as a Hispanic female, with light skin, green eyes, wearing a uniform with a blue shirt and stripes, approximately 5'2", with blond hair and a stocky build, and was identified by the investigation as Sgt. Lissette Nieves of Patrol Boro Bronx Task Force. § 87(2)(b) told LT Nunez and Sgt. Nieves that he believed he had been arrested because the intoxicated woman did not want to talk to PO Lajara. Sgt. Nieves walked around the desk to where § 87(2)(b) was standing, and squeezed the handcuffs tighter. Later in his interview, § 87(2)(b) said that it was PO Alba who walked around the desk and made his handcuffs tighter, and even later in his interview, he stated that PO Alba only tightened the left side. § 87(2)(b) fell down on the floor in front of the desk and screamed, "What the?" in pain, and stopped himself before he said anything else. He was taken to a cell.

§ 87(2)(b) complained of wrist pain, and was taken to § 87(2)(b) Hospital by ambulance. PO Alba rode with him.

After § 87(2)(b) arrived at the hospital, he told PO Alba repeatedly, "You and your partner are going to go down for this. I'm [not] going to drop charges." Eventually, PO Alba screamed at him to, "Shut the fuck up!" X-rays were taken of § 87(2)(b)'s arm, which showed that nothing was broken. He also received a shot of 40 mg of Ibuprofen to numb the pain in his wrist. § 87(2)(b)'s left wrist was bandaged, and hospital staff told PO Alba not to handcuff that hand, because it was bandaged and hurt, but PO Alba handcuffed him anyway. At some point, he told PO Alba about a previous injury to his arm, but he still placed his arm behind his back in order to rear handcuff him. Later in his interview, § 87(2)(b) stated that PO Alba did not handcuff him behind his back, but that PO Alba did place the handcuffs on his injured wrist. After he handcuffed him at the hospital, PO Alba said, "Oh. They're too loose? Let me tighten them up for you," and made the left handcuff tighter.

§ 87(2)(b) was taken from the hospital to Bronx Central Booking. In Central Booking, PO Alba came up to him and handed him four summonses for 30% tints on the driver's side, front and back windows, and passenger side, front and back windows. § 87(2)(b) was eventually charged with resisting arrest, and bail was set at \$500. His property voucher listed "eating" a red light, and reckless endangerment, but he did not receive a summons for these offenses.

When the microchip from § 87(2)(b)'s phone was returned to him, all of the information on the chip was erased. § 87(2)(b) was told it happened accidentally when the battery was taken out of the phone.

§ 87(2)(b) showed the investigator photos on his phone, which were taken around 12:00pm on July 19, 2010, and showed a red mark on his left wrist, from the handcuffs.

### **Statements to Medical Provider**

In the NYC 911 System Provider Patient Call Report, § 87(2)(b)'s chief complaint was a swollen wrist, and he claimed that the mechanism of injury was being handcuffed. He

reported being handcuffed by police officers, who twisted his arm and tightened the handcuffs. § 87(2)(b) reported that he had a prior injury to his left arm, and had a metal rod inside. After § 87(2)(b) arrived at § 87(2)(b) Hospital, he reported his chief complaint was left arm/wrist pain and swelling, and the injury description was “twisted left arm/wrist by NYPD from handcuffing.” § 87(2)(b)’s medical records state that he was experiencing left wrist pain and swelling subject to an arrest for reckless driving and disorderly conduct at approximately 2:00am that day. § 87(2)(b) was removed from his motor vehicle and handcuffed for not cooperating (encl. 9a-9oo).

### **Notice of Claim Statement**

In his Notice of Claim, § 87(2)(b) stated that he was illegally searched and seized by the New York City Police Department, and that he had not committed any crime or violation of the law and was not in possession of drugs or other contraband. He contended that NYC officers did not have cause to search his “person or effects, nor voluntary consent from § 87(2)(b) § 87(2)(b) alleged that the officers used “discourteous language and behavior” towards him during his arrest. He had “multiple assault and batteries committed to his person, including but not limited to being dragged out of his car and placed in handcuffs too tight. § 87(2)(b) made multiple complaints about handcuffs being too tight to no avail.” § 87(2)(b) was subject to other “illegal searches” at that stationhouse. § 87(2)(b) was taken to § 87(2)(b) Hospital due to “the police’s excessive force,” and is being maliciously prosecuted for said incident (encl. 12a-b).

### **NYPD Statements:**

#### **Subject Officer: PO ALFREDO ALBA**

- § 87(2)(b)
- *On the date of the incident PO Alba was assigned to directed patrol in the 41<sup>st</sup> Precinct, with PO Miguel Lajara, in uniform. He was on duty from 5:30pm on July 17, 2010 until 2:05am on July 18, 2010, and was assigned to marked patrol car number 2296.*

### **Memo Book**

At 3:07am, an arrest was made at the intersection of West Farms Road and Home Street, creating reserve complaint number 343. At 5:48am, PO Alba arrived at § 87(2)(b) Hospital. During that time, the arrestee was rear cuffed for making threats to his arresting officer. At 7:18am, the arrestee was released from hospital, awaiting transportation (encl. 7a-c).

### **OLBS Arrest Reports and Criminal Court Complaint**

§ 87(2)(b)’s OLBS report and Criminal Court Complaint state that he was observed holding traffic, when advised by police to move stated, “Fuck you! Who the fuck is you to tell me what to do?” § 87(2)(b) then proceeded through traffic and through a pedestrian crosswalk and disobeyed a steady red light. Upon approach, § 87(2)(b) was uncooperative and attempted to avoid arrest by throwing his arms and resisting. He was charged with resisting arrest, reckless driving, and disorderly conduct (violent behavior, unreasonable noise, obscene language/gestures, and obstructing traffic). The Criminal Court Disposition also added the charge of harassment. PO Lajara reported to PO Alba that § 87(2)(b)’s actions caused him to fear for his safety (encl. 7d-j).

### CCRB Statement

PO Alba was interviewed at the CCRB on September 24, 2010 (encl. 7m-o) and by IAB on September 14, 2010 (encl. 7k-l). On July 18, 2010, at approximately 1:30am, PO Alba and his partner, PO Lajara issued a summons to someone unrelated to this incident. PO Alba then recorded the summons information in his memo book, from inside the patrol car, which was parked across the street from the Tropicana night club, between Home Street and West Farms Road, in the Bronx. While PO Alba recorded the incident in his memo book, PO Lajara walked up to a female who was intoxicated, who was standing on the same of the street as the officer's patrol car. PO Lajara, who stood on the sidewalk with the woman, approximately three feet from the patrol car, tried to ascertain whether she was okay or if she needed to go to the hospital.

§ 87(2)(b) drove up to the intoxicated woman and double parked in the street right next to the patrol car, which backed up traffic behind him. PO Alba, who was still in the car, saw § 87(2)(b) speak with PO Lajara. He did not hear what § 87(2)(b) initially said, but heard the end of it, when PO Lajara told § 87(2)(b) to "keep it moving," and § 87(2)(b) said to PO Lajara, "Who the fuck are you to tell me what to do?" PO Lajara began to approach § 87(2)(b)'s vehicle, and § 87(2)(b) drove away. He ran a red light to get away from them. PO Lajara immediately got back into the patrol car to pursue him, and stopped him approximately one half of a block away because § 87(2)(b) could not move around a double-parked car.

Once he was stopped, PO Alba approached the driver's side of § 87(2)(b)'s vehicle, and asked him for his credentials. PO Lajara approached the passenger side window. § 87(2)(b) did not cooperate with PO Alba's request, and asked, "Why the fuck did you stop me for?" PO Alba repeated his request for § 87(2)(b)'s credentials at least three times, and had to repeat it loudly because § 87(2)(b) was a "loud mouth." He kept repeating "Why the fuck did you stop me for?" His demeanor was "disrespectful" and "intimidating," which he showed by saying, "My brother's on the job, I know people in the CIA, I know your ICO." He also said, "I got a half a million dollars in the bank, and I got a good lawyer." His volume was loud throughout the entire incident. PO Alba told him, "Good for you," but otherwise did not respond. § 87(2)(b) activated some type of recording device at some point, which PO Alba knew because § 87(2)(b) announced it. He did not know where the device was or if it was from § 87(2)(b)'s car or cell phone.

PO Alba told § 87(2)(b) to step out of the car, and opened the driver's side door for him. § 87(2)(b) stepped out, and provided his ID as he was coming out of the vehicle. PO Alba and § 87(2)(b) did not have any physical contact with each other up to this point, in connection with § 87(2)(b) getting out of the car. Once he stepped out of the car, PO Alba directed § 87(2)(b) to walk to the back of the car, where PO Lajara had gone when § 87(2)(b) started getting out of the car. § 87(2)(b) complied right away and went to the back of the car, though he was still yelling, saying the same types of things referred to above. PO Lajara later told PO Alba that § 87(2)(b) pushed him at this point, but PO Alba did not see it happen. PO Lajara handcuffed § 87(2)(b) and PO Alba thought that he saw the handcuffing, but was not sure. He was next to § 87(2)(b)'s car at that time, between the back and the front driver's side, and did not know why he may or may not have seen the handcuffing.

Once § 87(2)(b) was handcuffed, PO Lajara searched him, pursuant to his arrest. PO Alba searched the area of § 87(2)(b)'s car which he defined as "immediate." PO Alba defined the search as "standard" and did not remember specifics of the search, including what the "immediate" area was comprised of and what made the search "standard." § 87(2)(b) was still yelling, and his behavior drew a crowd of approximately fifty people, who did not interfere

with the officers. PO Alba drove § 87(2)(b) to the 41st Precinct stationhouse, and PO Lajara drove § 87(2)(b)'s car back to the stationhouse. PO Alba never saw PO Lajara hit anything with § 87(2)(b)'s car, and he never mentioned anything along those lines.

Once they arrived at the 41st Precinct stationhouse, Sgt. Nieves, PO Alba's supervisor, approved the arrest and signed the command log, and PO Alba processed § 87(2)(b)'s arrest. PO Alba did not remember who the desk sergeant was. No other officers interacted with § 87(2)(b) in the stationhouse, and only PO Alba dealt with removing and vouchering § 87(2)(b)'s property. No one else would have touched § 87(2)(b)'s things, except perhaps PO Lajara, who might have assisted with some aspect of it. Part of vouchering § 87(2)(b)'s property included removing the cell phone battery from the actual phone, and vouchering both parts separately. This is standard procedure, although PO Alba did not know why. The phone data was never searched, and no data was purposely erased.

At some point, § 87(2)(b) complained that his handcuffs were too tight, and said he had wrist pain. PO Alba escorted § 87(2)(b) to the hospital, where a doctor informed PO Alba that § 87(2)(b) had had previous surgery on one of his wrists. On the way to the hospital, out of courtesy, PO Alba had § 87(2)(b)'s right hand (the one he said had the hurt wrist) handcuffed to his pants, instead of rear cuffing him. This was due to PO Alba's discretion, and for the comfort of § 87(2)(b) because it took pressure off the wrist area. However, § 87(2)(b) continued to argue with PO Alba. Eventually, § 87(2)(b) seemed threatening as he talked about knowing where PO Alba went when he was off duty. On the way back to the stationhouse § 87(2)(b) was rear-cuffed. PO Alba never tightened the handcuffs once they were applied, and never told § 87(2)(b) to shut the fuck up.

#### **Subject Officer: PO MIGUEL LAJARA**

- § 87(2)(b)
- *On the date of the incident PO Lajara was assigned to directed patrol in the 41st Precinct, with PO Alfredo Alba, in uniform. He was on duty from 5:30pm on July 17, 2010 until 2:05am on July 18, 2010, and was assigned to marked patrol car number 2296.*

#### **Memo Book**

At 1:45am, PO Alba arrested § 87(2)(b). His memo book states, "was arrested for disorderly conduct, reckless driving, reckless endangerment, resisting arrest. Recap of arrest situation: Perp was blocking traffic in front of Tropicana on Home Street. At the same time he was yelling and cursing out of his window, causing public alarm and when ordered by PO Lajara to clear the road and open up the flow of traffic, he replied, "Who the fuck is you? I know your CO. I could make you or break you. You ain't shit." I ordered him to move the car again and he repeated, "fuck you." At which point I told him to pull to the side of the road and he refused by speeding down a local street and going thru a steady red light, then turning left without signaling. When pulled over he refused to cooperate with PO Alba and continued to make threats, saying, "I'm gonna own you. I'm gonna call your sergeant and put you on a foot post." At this point § 87(2)(b) was arrested, placed in handcuffs, and double locked upon arrival at the command." At 3:15am, EMS arrived at the 41st Precinct (encl. 8a-d).

#### **CCRB Statement**

PO Lajara was interviewed on September 24, 2010 (encl. 8g-j) and was interviewed by IAB on September 14, 2010 (encl. 83-f). His statement was consistent with PO Alba's, with additional information and exceptions noted below.

When § 87(2)(b) initially sped away from the officers, he stopped his car next to the officers' patrol car in order to taunt them, and then sped off again.

Due to § 87(2)(b)'s behavior, the officers did not know if the car was his, or if it was stolen.

When § 87(2)(b) exited the vehicle and stepped towards PO Lajara, PO Lajara said, "Sir. Do me a favor. Just step back. Stay by your vehicle." § 87(2)(b) said, "No," continued to step towards him, and used both hands and pushed PO Lajara in the chest hard enough that PO Lajara had to take a step back. PO Lajara took a step forward after being pushed, and immediately started handcuffing § 87(2)(b). § 87(2)(b) resisted being handcuffed by "pushing and tugging" but PO Lajara could not be more specific. § 87(2)(b) may have also kicked at him, but PO Lajara did not remember. PO Lajara ordered § 87(2)(b) to stop resisting, and told him he was under arrest. § 87(2)(b) did not comply with any verbal commands. PO Lajara managed to handcuff one of § 87(2)(b)'s hands, but § 87(2)(b) would still not provide his other hand, so PO Alba had to pull the other hand behind § 87(2)(b)'s back so they could handcuff it. § 87(2)(b)'s handcuffs were then "double-locked" so that if he continued to struggle, the handcuffs would not get tighter. PO Lajara checked to make sure the handcuffs had enough room, which they did. § 87(2)(b) complained that the handcuffs were too tight. PO Lajara told § 87(2)(b) that the cuffs would come off when he got to the stationhouse. At no time during the incident did PO Lajara or PO Alba tighten § 87(2)(b)'s handcuffs. PO Lajara added in his interview that it would have been impossible to tighten them when double-locked anyway, which is the purpose of double-locking.

PO Lajara heard later that § 87(2)(b) said that he had hit something with his car. Officers from the Internal Affairs Bureau have already gone to § 87(2)(b)'s house, taken pictures of the car, and confronted him about his allegation that PO Lajara damaged his car. IAB determined that § 87(2)(b)'s allegation was unfounded.

At some point at the stationhouse, PO Alba and PO Lajara searched § 87(2)(b)'s car, as part of the procedure to voucher his property.

At some point, § 87(2)(b) complained of a broken arm. PO Lajara observed that § 87(2)(b) had a scar. PO Alba later told PO Lajara that the doctor who saw § 87(2)(b) at the hospital asked PO Alba why they brought him in there, because he was acting so badly. PO Alba reported that they rushed § 87(2)(b) out of the emergency room because they did not want to "deal with his mouth." Ultimately, the doctor who examined § 87(2)(b) determined he was okay, and PO Alba brought him back to the stationhouse.

Both officers brought § 87(2)(b) to Bronx Central Booking, where § 87(2)(b) told PO Lajara and PO Alba that if he "found either of them with a girl, when they were not looking, [he] would get them." PO Lajara did not add those threat charges because they were exhausted at that point, and they would have to start the process over.

### **Officers Not Interviewed**

Although the statements and documentary evidence identified Lt. Nunez and Sgt. Nieves as present in the 41<sup>st</sup> Precinct stationhouse when § 87(2)(b) was brought in, the investigation did not need statements from these officers in order to reach a determination regarding the allegations in this case.

### **Medical Records**

§ 87(2)(b) arrived at § 87(2)(b) Hospital, in the Bronx, by stretcher on § 87(2)(b). § 87(2)(b) was examined and no fracture or dislocation was found. He was given an intramuscular injection of Toradol, (an anti-inflammatory), an ace bandage, Motrin, and



instructed to rest, apply ice, and to compress and elevate the area. Examination showed decreased range of motion in the left wrist and fingers, and mild-moderate tenderness. § 87(2)(b) s medical history included left wrist and elbow surgery in 2008. On § 87(2)(b) § 87(2)(b) was in a motor vehicle traffic accident in which he collided with a bicyclist, injuring the cyclist, and causing him some type of unspecified, though active, health problem. No loss of consciousness was noted or reported on § 87(2)(b) (encl. 9a-9oo).

### Arrest for Incident and Disposition

- Docket number § 87(2)(b) remains open. On § 87(2)(b), § 87(2)(b) was released on his own recognizance and a temporary order of protection was issued. § 87(2)(b)'s next scheduled court date is § 87(2)(b) (encl. 11t-u).

### **Status of Civil Proceedings**

- § 87(2)(b) filed a Notice of Claim with the City of New York on August 9, 2010. § 87(2)(b) is suing for assault, battery, false arrest, emotional distress, physical pain/injury, illegal search and seizure without a warrant, violation of his civil rights under the Constitution, negligent hiring and retention of the officers, loss of liberty, loss of dignity and reputation, loss of earnings, and malicious prosecution. § 87(2)(b) is seeking \$3 million as redress (encl. 12a-b).

§ 87(2)(b)

## Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) Case number 201010070 was closed as a duplicate of this case (encl. 3a).

## Subject Officers CCRB History

- PO Alfredo Alba has been a member of the service for seven years and there is one substantiated CCRB allegation against him, for a retaliatory summons in case number 200615469. PO Alba received command discipline (encl. 1a).
- PO Miguel Lajara has been a member of the service for five years and there are no substantiated CCRB allegations against him (encl. 2a).

## Conclusion

### Identification of Subject Officers

- PO Alba acknowledged interacting with § 87(2)(b)
- PO Lajara acknowledged interacting with § 87(2)(b)
- PO Alba and PO Lajara testified that they both dismantled and vouchered § 87(2)(b)'s cell phone pursuant to his arrest, and that no other police officers would have had access to the cell phone. Therefore, damage to § 87(2)(b)'s cell phone is being pleaded against both officers.

### Allegations Not Being Plead

A search of § 87(2)(b)'s car is not being pleaded for the following reasons: § 87(2)(b) originally stated he did not witness a vehicle search at the scene. When he amended his statement to say he did witness one, he confirmed that he provided the officers with verbal consent to search the vehicle. Furthermore, because § 87(2)(b) was arrested and his vehicle was not in a legal spot, it had to be impounded and brought back to the stationhouse, and was therefore subject to an inventory search.

When § 87(2)(b) picked up his vouchered cell phone microchip, he contended that the information was erased, and he was told it happened accidentally. Because he did not witness this and there is no indication that if information was deleted it was intentional, no property damage is being pled regarding the microchip of his phone.

### Investigative Findings and Recommendations

**Allegation A – Discourtesy: At Home Street and West Farms Road, PO Miguel Lajara spoke obscenely and/or rudely to § 87(2)(b)**

**Allegation B – Discourtesy: At Home Street and West Farms Road, and inside § 87(2)(b) Hospital, PO Alfredo Alba spoke obscenely to § 87(2)(b)**

§ 87(2)(b) alleged that PO Alba and PO Lajara used the word, “fuck,” towards him on more than one occasion, but that he did not use similar language when speaking to the officers. PO Alba and PO Lajara both testified that § 87(2)(b) used the word “fuck,” on numerous occasions when speaking to them, but that they did not curse when speaking to § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

**Allegation C – Force: Inside the 41st Precinct stationhouse, and inside § 87(2)(b) Hospital, PO Alfredo Alba tightly handcuffed § 87(2)(b)**

§ 87(2)(b) alleged that Sgt. Nieves walked around the front desk, to where § 87(2)(b) was standing, and squeezed his handcuffs tighter. Later in his interview, § 87(2)(b) alleged that it was PO Alba who walked around the desk and made both of his handcuffs tighter. Even later in his interview, § 87(2)(b) stated that PO Alba only tightened the left handcuff. § 87(2)(b) alleged that while he was leaving the hospital PO Alba placed § 87(2)(b)'s arm behind his back in order to rear handcuff him. Later in his interview, § 87(2)(b) stated that PO Alba did not handcuff him behind his back, but that PO Alba did place the handcuffs on his injured wrist and said, “Oh. They’re too loose? Let me tighten them up for

ignored. § 87(2)(b), § 87(2)(g)

Investigator:	_____	_____	_____
	Signature	Print	Date
Supervisor:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date